IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NO : 32697 of 1997

Between:

Bhagyanagar khadi Samiti, rep.by its Mamber Secretary
Sultan Bazar, Hyderabad.

..... PETITIONER

AND

1 Gururaj G.Gurajale (Died)
H.No. 1-1-336/59A, Vivenknagar, Chikkadpally,
Hyderabad.
2 The Appellate Authority under Sec. 48(3) A.P.S.E.Act &

Dy. Commissioner of Labour (Twin Cities), Hyderabad.
3 The Authority Under Sec. 48(1) of A.P.S.E.Act &

Asst. Commissioner of Labour, Hyderabad-III
Anjaiah Karmika Samkshema, RTC Cross Road,
Hyderabad.
4 Saraswathi Gurjale, W/o. Late Gururaj G.Gurjale,
R/o. H.No. 1-1-336/100, Chikkadpally,
Hyderabad-20
5 Ashok G.Gurjale, S/o.Late Gururaj G.Gurjale,
R/o. H.No. 1-1-336/364 Chikkadpally,
Hyderabad.
6 Ramana Gurjale, S/o. Late Gururaja G.Gurjale,
R/o. 1-1-336/100, Chikkadpally, Hyderabad-500 020.
(Respondent Nos.4 to 6 are brought on record as LRs of the

deceased-1st respondent as per court order made in

WPMP.No.23072/02, dt.26-9-2002)

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to graciously issue an order, direction or a writ particularly one in the nature of WRIT OF CERTIORARI, and after calling for records in Common order in S.A.1 of 1997 and 2 of 1997 dated 19.9.97 and quash the same.

Counsel for the Petitioner : MR.S.RAVINDRANATH

Counsel for the Respondent No.1 : MR.M.V.BHARATI

The Court made the following :

O R D E R :

This writ petition is filed by the petitioner management aggrieved by the order passed by the appellate authority under Section 48 (3) of the A.P.Shops and Establishments Act, 1988 (for brevity 'the Act') in dismissing the appeal filed against the order of the Assistant Commissioner of Labour, passed under Section 48(1) of the Act.

The first respondent, who died during the pendency of the present writ petition, was employed by the petitioner. Initially, on certain allegations, he was suspended on 3-1-1986, which was followed by an enquiry conducted by the petitioner management and later he was dismissed from the service by proceedings
dated 27-4-1988. The order of dismissal, passed under
Section 48(1) of the Act, was assailed by the first respondent before the Assistant Commissioner of Labour. The first appellate authority, who heard the said appeal, has come to a conclusion that the management did not give proper opportunity to the employee during the course of enquiry, therefore, the enquiry conducted by the management is vitiated. Therefore, on that ground the order of dismissal was set aside. Consequently, the appellate authority held that the enquiry conducted by the disciplinary authority is invalid, the charges stand disproved, and accordingly set aside the order of dismissal dated 27-4-1988. The said order was assailed before the second appellate authority – the Deputy Commissioner of Labour, in S.A.No.1 of 1991 unsuccessfully by the petitioner management, and therefore, the present writ petition.

The learned counsel for the petitioner management

Sri S.Ravindranath contended that when the appellate authority concluded that the domestic enquiry conducted by the management is vitiated for not giving sufficient opportunity to the employee, the appellate authority ought to have either remanded the matter for fresh enquiry or given an opportunity to the employer to adduce evidence. He also contended that the appellate authority did not give any opportunity to the employer to lead evidence to justify the order of dismissal, in the absence of which, setting aside the order of dismissal, is illegal and liable to be set aside. He further contended that, the Apex Court in the case of **United Planters Association of Southern India v. K.G.Sangameswaran and another** had an occasion to consider almost identical provisions under the Tamil Nadu Shops and Establishments Act, 1947 and while considering the provisions under the said Act, held that the appellate authority instead of remanding the matter to conduct fresh enquiry to continue the bitterness between the employer and the employee, ought to have allowed the parties to adduce evidence before it and ought to have decided the issue to shorten the litigation. Therefore, the learned counsel contended that in the light of the said decision, the appellate authority ought to have given an opportunity to the employer to adduce evidence to justify the order of dismissal. As no such opportunity was given to the petitioner management, the order is liable to be set aside. Alternatively, the learned counsel contended that the employee, who was dismissed, has got two options either to file an appeal under the provisions of the Act or he can as well approach the Labour Court under the provisions of the Industrial Disputes Act, 1947. When once the employee approaches the Labour Court and if the Labour Court comes to a conclusion that the domestic enquiry was not conducted properly or vitiated for non-compliance of the procedure, the Labour Court is free to record evidence adduced by both sides and decide the issue afresh. As no such specific provision is contemplated under the Act, it would be proper to interpret the relevant provisions so as to extend the said benefit both to the employee and the employer, to adduce evidence in order to reduce the litigation and curtail the period of bitterness between the employer and the employee. Therefore, the learned counsel sought for appropriate orders.

The learned counsel for the respondents, on the other hand, supported the orders of

the authorities under the Act.

Heard both sides and considered the material on record.

The issue to be considered in this writ petition is whether the order passed by the second appellate authority under the Act, confirming the order passed by the first appellate authority setting aside the dismissal order passed by the petitioner management, requires interference by this Court.

It is a fact that the first respondent-employee was employed under the petitioner-management. On certain allegations, the employee was charge sheeted on 27-1-1987 framing certain charges and an additional charge sheet was also issued on
18-10-1987. Thereafter, domestic enquiry was conducted and basing on the report of the domestic enquiry, the petitioner was terminated from the service on 27-4-1988. It is also a fact that the petitioner was suspended during the pendency of the domestic enquiry and though he had superannuated by 25-9-1997, the date of superannuation was extended till 28-4-1998 on which date, the order of dismissal was passed. Aggrieved by the said order of dismissal, the employee filed an appeal under Section 48 (1) of the Act. The appellate authority, after considering the contentions of both sides, recorded a finding that the domestic enquiry conducted by the employer is vitiated for not giving sufficient opportunity to the employee, and therefore, held that the enquiry, as held is invalid and the charges stand disproved and consequently set aside the order of dismissal. The said order was confirmed in the Second Appeal preferred by the petitioner management.

The contention of the petitioner management is that when the domestic enquiry was held to be vitiated for non-compliance of the procedure or for not giving sufficient opportunity to the employee, the appellate authority ought to have recorded

the evidence in the light of the decision of the Apex Court in the case of **United Planters Association** (supra). In the said case, the Apex Court was considering the termination order passed under the provisions of the Tamil Nadu Shops and Establishments Act, 1947. Under Section 41 of the said Act, an appeal is provided against the order of termination or dismissal. The procedure to be followed while disposing of the appeal is provided under Rule 9 of the Rules made thereunder. Sub-rule (3) of Rule 9 is relevant, which reads as under.

> (3) The procedure to be followed by the Appellate Authority (Deputy Commissioner of Labour), when hearing appeals preferred to him under sub-section (2) of Section 41 shall be summary. He shall record briefly the evidence adduced before him and then pass orders giving his reasons therefor. The result of the appeal shall be communicated to the parties as soon as possible. Copies of the orders shall also be furnished to the parties, if required by them.

While considering the said provision, which is almost analogous to Section 11-A of the Industrial Disputes Act, 1947, the Apex Court held that the appellate Court has the power to record evidence not only confined to cases where no evidence was recorded at domestic enquiry and principles of natural justice were violated, but also to cases where appellate authority decides to come to its own conclusion to find out whether the employee is guilty of misconduct or not. The appellate authority has jurisdiction to take evidence or record evidence even in cases where no domestic enquiry was held - Whether employer desires to let in evidence - Despite not holding domestic enquiry can be cured by giving opportunity at the appellate stage and the same would be sufficient to meet the demand of the employee for just and proper enquiry. Though the learned counsel relied upon the said provision, the judgment rendered while considering the provisions of the Tamilnadu Shops and Establishments Act, which are totally different from the provisions under the A.P.Shops and Establishments Act and the rules made thereunder. Though similar to Section 41 of the Tamilnadu Shops and Establishments Act, Section 48 of the A.P.Shops and Establishments Act provides for appeal, but, insofar as the procedure provided under Rule 21 of the A.P.Shops and Establishments Rules, 1990 (for brevity 'the Rules') as to the appeals to be dealt with, there is a total variation. Sub-rule (2) of Rule 21 of the Rules is relevant, which reads as under.

21.Appeals:-

(2)(a)The procedure to be followed by the Appellate Authority for hearing appeals preferred to it under sub-section (1) of Section 48 shall be summary. It shall pass orders giving its reasons therefor. A Register of Appeals in Form XIII shall be maintained by the Appellate Authority wherein the particulars of the appeal and summary of the final order shall be recorded.

(b)If the employer fails to appear on the specified date, the Authority may proceed to hear and determine the application *ex parte.*

(c)If the applicant fails to appear on two successive dates of hearing, the Authority may dismiss the application.

Provided that an order passed under clause (b) or clause (c) above may be set aside and the application re-heard, if any good cause being shown by the defaulting party within one month from the date of the said order, after service of notice to opposite party.

(d)The parties shall not be entitled to produce additional evidence whether oral or documentary before the Appellate Authority. But it can be entertained on the following grounds:

(i)the employer from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted; or

(ii)the Appellate Authority requires any document to be produced or any witness to be examined to enable it to pass orders or for any other substantial cause, the Authority may allow such evidence or document to be produced or witness to be examined.

(e) ……

(f) … … …

A perusal of the above procedure, provided under Rule 21 (2) of the Rules, it is clear that the parties are not entitled to produce additional evidence, whether oral or documentary, before the appellate authority. However, it provides an exception only in cases, firstly where the employer, from whose order the appeal is preferred,

has refused to admit evidence, which ought to have been admitted; and secondly, where the appellate authority requires any documents to be produced or any witness to be examined to enable it to pass orders and or any other substantial cause, the authority may allow such evidence or documents to be produced or witnesses to be examined. Whenever such additional evidence is allowed, the appellate authority shall record the reasons for its admission. Therefore, it is clear from the procedure prescribed under the present Act, there is absolutely no provision to lead evidence when once the domestic enquiry is held vitiated for
non-compliance of the procedure or failure to give opportunity to the employee, contrary to the provisions of Tamil Nadu Shops and Establishments Act, as referred to earlier. Hence the Judgment of the Apex Court is not of any assistance.

Further, as contended by the petitioner's counsel, if different procedure is prescribed under the Industrial Disputes Act, merely because there is an option to the employee to choose the forum to approach for redressal, the same may not be a ground to extend the benefit contemplated under that Act, to the proceedings under another Act.

From the impugned order, it is clear that both the authorities held that the impugned order of dismissal is vitiated for not giving sufficient opportunity to the employee. Therefore, there are no grounds warranting interference with the said order.

The writ petition is accordingly dismissed. No costs.

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(S.ANANDA REDDY,J)

5-11-2004.

Msr.

To

1 The Dy. Commissioner of Labour (Twin Cities),

(Appellate Authority under Sec. 48(3) A.P.S.E.Act), Hyderabad.
2 The Asst. Commissioner of Labour

(Authority Under Sec. 48(1) of A.P.S.E.Act),

Hyderabad-III, Anjaiah Karmika Samkshema Bhavan,

RTC Cross Road, Hyderabad.
3. 2CD copies

HON’BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.32697 of 1997

5-11-2004.

(Msr)